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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 459

PACIFIC INSURANCE ASSOCIATES, LTD.,
a Guam corporation, *Petitioner*,

v.

FASHIONS, INCORPORATED, a corporation, *Respondent*.

BRIEF FOR THE RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Ninth Circuit

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Respondent believes that a Writ of Certiorari should not be issued to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The opinion of the Court of Appeals was not reported; the court having unanimously agreed that the publishing of this opinion would serve no public interest. The judgment is set forth in the appendix of the petition.

JURISDICTION

The judgment of the Court of Appeals was entered May 18, 1964. The petition of Appellant below for re-hearing was timely filed and was denied by the court on June 8, 1964. On June 15, 1964, an order was entered extending petitioner's time in which to petition for a writ of certiorari until 31 August, 1964. The petition, dated August 18, 1964, was timely served on counsel for Respondent being received on August 29, 1964. Jurisdiction of this petition is in this court pursuant to 28 U.S.C. section 1254(1) and Rule 19(b) of the Rules of the United States Supreme Court.

QUESTIONS PRESENTED

1. Whether the Court of Appeals has adopted a new standard of review for cases arising in Guam pursuant to 28 U.S.C. section 1291; 1294, creating a conflict with the decisions of the other Courts of Appeals.

2. Whether the rule or standard of decision of the Court of Appeals for the Ninth Circuit has departed from the accepted or the usual course of judicial proceedings or has sanctioned such departure by the Appellate Division of the District Court of Guam so as to warrant the exercise of this court's power of supervision.

STATEMENT OF THE CASE

Jurisdiction of this case was vested in the Island Court of Guam pursuant to Section 82 Guam Code of Civil Procedure; in the Appellate Division of the District Court of Guam by Section 1424(a) Title 48 U.S.C., and in the United States Court of Appeals for the Ninth Circuit by section 1294 Title 28 U.S.C.

This action in unlawful detainer, pursuant to Section 1159 to 1179 Guam Code of Civil Procedure, was commenced 16 January, 1958. Judgment was in favor of plaintiff, petitioner herein. Respondent herein appealed to the Appellate Division of the District Court of Guam which on 19 February, 1960, granted to respondent a new trial on the issue as to whether there had been a partial eviction.

Hearing on that issue was had by the Island Court of Guam and judgment was entered on 6 May, 1960, for Plaintiff. The Island Court of Guam found as a matter of fact that there had been no partial eviction. Defendant, Respondent herein, appealed again to the Appellant Division of the District Court of Guam and on 1 February, 1963, that court again reversed the Island Court of Guam and judgment was entered for Defendant, Respondent herein. Petitioner herein appealed this decision to the United States Court of Appeals for the Ninth Circuit.

On the 18th day of May, 1964, the United States Court of Appeals for the Ninth Circuit affirmed unanimously the decision of the Appellate Divisions of the District Court of Guam.

ARGUMENT

The judgment of the United States Court of Appeals for the Ninth Circuit is correct; is not in conflict with any other circuit; does not depart from the accepted and usual course of procedure and does not warrant the exercise of this court's power of supervision. There is insufficient basis to warrant a further review by this court of this case.

1. The United States Court of Appeals for the Ninth Circuit Has Not Adopted a New Standard of Review for Cases Arising in Guam and the Standard of the "Clear and Manifest Error" Rule Does Not Conflict With the Decisions of the Other Circuits.

Petitioner bases its assertions upon an alleged conflict in that the First Circuit in reviewing appeals from Puerto Rico must apply the rule in *Bonet* v. *Texas Co. (P.R) Inc.*, 308 US 463 and *De Castro* v. *Board of Commissioners*, 322 US 451, while the Third Circuit does not, but as shown by *Clen* v. *Jorgensen*, 265 F. 120, and *Collwood* v. *Collwood*, 127 F.Supp. 179, reviews such cases de novo. The Ninth Circuit followed in this case the rule set forth in *Gumataotao* v. *Government of Guam*, 322 F.2d 580 (1963), which is the same rule as followed by the First Circuit.

There is, thus, no conflict between the First Circuit and the Ninth Circuit.

The Third Circuit, as is shown by *Clen* v. *Jorgensen*, supra, and *Collwood* v. *Collwood*, supra, does not apply this rule but reviews cases both as to the law and the facts—there is a trial de novo.

This is not a conflict between the Circuits but one between the text of the Organic Acts. The de novo type of review of Virgin Island cases by the Third Circuit is provided for by statute, as is set forth in *People of Virgin Islands* v. *Price*, 181 F.2d 394 (1950):

> ". . . It is plain that by these acts Congress intended to continue in force in the Virgin Islands the local law existing under Danish sovereignty, so far as compatible with the changed sovereignty and until changed either by Congress or by the local legislative bodies. Judicial procedure, including the scope of review upon appeal, was a

part of the body of local law thus continued in force. Clen v. Jorgensen, (3 Cir., 1920), 265 F. 120. The Clen case was the first to reach this court after the change in sovereignty. One of the questions involved in that case was the scope of our review. We there pointed out that prior to the change in sovereignty an appeal was allowed from the district court to the Supreme Court of Denmark, in which court the whole record was reviewed de novo and we stated, 265 F. at page 124: 'Therefore, until Congress shall provide otherwise, we shall regard the appellate jurisdiction conferred by the recited act (Sec. 2 of the Organic Act of 1917) to be such as to enable this court to review on appeal all matters of fact and of law involved in the judgments brought here for review.' . . . .

"It is obvious that in a case tried to a jury in the District Court appellate review could not take the form of a trial de novo, as appears to have been the practice under the Danish law. But there is nothing in our procedure which prevents a complete review on appeal of all disputed questions of fact. Nor, as we pointed out in the Clen case, is such broad review incompatible with the changed sovereignty of the islands. On the contrary, as Professor Orfield has pointed out, it is in accordance with the more enlightened modern view, both in the United States and England, which grants an appeal on the merits as well as on questions of law. We therefore, hold, in accord with our decision in Clen v. Jorgensen, that under the local law of the Virgin Islands we have both the power and the duty to review matters of fact as well as of law which are involved in an appeal . . . ."

Thus, there is no conflict between the circuits.

The instant case involves an appeal on a question of local law as decided by the highest tribunal of the

Unincorporated territory of Guam. No statutory authority exists for a trial de novo as was provided for on review of Virgin Island cases.

The Court of Appeals for the Ninth Circuit properly applied the rule as laid down by this court for review of cases arising in Puerto Rico. This is a prevailing, well established, sound rule which should be followed.

Fernandez' Heirs v. *Fernandez*, 184 F.2d 1015 (1st Cir.) Cert. Den. 341 US 902, 95 L.Ed. 1342:

> "... The Supreme Court of Puerto Rico is free to formulate a local doctrine of de facto officers which may not in all respects coincide with the doctrine as generally applied in the courts here on the Continent. In quite an analogous situation presented in Monagas v. Vidal, 1 Cir., 1948, 170 F.2d 99, 106, certiorari denied 1949, 335 U.S. 911, 69 S.Ct. 483, 93 L.Ed. 444, we held that the Supreme Court of Puerto Rico must be given similar latitude in formulating and applying the local doctrine of res judicata, for it is the primary function of that court 'to establish the rules of insular judicial administration to conform with its view of insular public Policy' ...."

> "Since the judgment of the Supreme Court of Puerto Rico is supportable upon an adequate ground of purely local law, as to which we cannot say that the determination of that court is 'inescapably wrong', it is clear that the judgment must be affirmed. DeCastro v. Board of Commissioners, 1944, 322 U.S. 451, 64 S.Ct. 1121, 88 L.Ed. 1394. . . ."

Meagher v. *Eastern Iron and Metal Co.*, 225 F.2d 841 (9 Cir.) 350 US 933, 100 L.Ed. 815 Cert. Den.:

> "... One of the questions before us is whether the Supreme Court had the legal power so to dis-

regard the Circuit Court's findings and substitute its own. This is a question of law upon which the Hawaiian Supreme Court can be reversed only if its decision is 'manifestly erroneous,' the United States Supreme Court so holding in Waialua Agricultural Co. v. Christian, 305 U.S. 91, 59 S.Ct. 21, 83 L.Ed. 60 . . . ."

"There is no merit in appellants' contention that Federal Rule 52(a), 28 U.S.C.A., is here relevant. The Federal Rules of Civil Procedure govern only United States District Courts. F.R.C.P. rule 1. They do not apply to the Hawaiian Territorial Courts and have not been made applicable to appeals to the Supreme Court of Hawaii by its legislature. Fong v. James W. Glover, 9 Cir., 197 F.2d 710 holds no more than that the rules apply as to the method of taking an appeal from the Hawaiian Supreme Court to this court. We affirm the decision in this appeal . . . ."

Schaffer v. *Below*, ... 278 F.2d 619, ... (3rd Cir.):

". . . The district court's finding of fact that Vose was not guilty of fraud finds ample support in the record. It is settled that this court will not overturn the district court's finding of fact unless clearly erroneous. Rule 52(a), Federal Rules of Civil Procedure, 28 U.S.C. Such is not the case here and we therefore see no merit in this assignment of error . . . ."

Pac v. *Stevens*, 267 F.2d 449 (9th Cir.) Cert. Den. 360 US 933, 3 L.Ed. 1547:

". . . This Court cannot review the ruling of the Territorial Court that a person who brings a contract action under the statute must establish as a condition precedent that he has exhausted his right of action or other remedy by suing the purchaser.

irrespective of good faith of the latter, since we cannot say such an interpretation is inescapably wrong . . . ."

". . . Upon a matter of statutory construction, this court should not reverse unless it can be established that the decision is patently erroneous . . . ."

Warner v. *First National Bank of Minneapolis*, 236 F.2d 853 (8 Cir.) Cert. Den. 352 US 927, 1 L.Ed.2d 162:

". . . This court has frequently stated that upon doubtful questions of local law it will not adopt a view contrary to that of the trial judge unless convinced of error . . . ."

In the matter of *Disciplinary Proceedings against Harriet Bouslog Sawyer*, Petitioner, ... 360 US 622, ... 3 L.Ed. 1473:

". . . Of course this Court and the Courts of Appeals must give the Territorial Courts freedom in developing principles of local law and in interpreting local legislation. See Bonet v. Texas Co. (P.R.), Inc., 308 US 463, 84 L ed 401, 60 S Ct 349, Decastro v. San Juan, 322 US 451, 454-458, 88 L ed 1384, 1389-1392, 64 S Ct 1121 . . . ."

The Court of Appeals in the instant case has properly applied the rule laid down by this court, and no question of substantial public concern is presented which merits a grant of certiorari.

2. The Court of Appeals for the Ninth Circuit Has Not Departed From the Accepted or the Usual Course of Judicial Proceedings Nor Sanctioned Such Departure By the Appellate Division of the District Court of Guam so as to Warrant the Exercise of This Court's Power of Supervision

The Court of Appeals has not departed from the usual standards for review of cases as is amply shown by the cases cited above.

In this case the Court of Appeals was reviewing the determination of the highest territorial tribunal of the Unincorporated territory of Guam upon a question of local law.

The standard set forth by this court in cases of this nature for the review of a determination of local law in *In Re Sawyer, supra*, reviewing a case arising from the Ninth Circuit is not only the proper standard to apply but such application, we assert, is mandatory upon the Ninth Circuit.

In view of the command of this court in similar cases it cannot be said that the Ninth Circuit was in error in not holding a trial de novo. There is no statutory authority to do so. In the absence of manifest error, the decision of the Appellate Division of the District Court of Guam, the highest local tribunal of this territory, should not be disturbed upon a matter of purely local law and its interpretation. To do so would be to refuse to permit the development of a local system of jurisprudence suited to local condition and problems. Clearly the Ninth Circuit has in no way approved or departed from the usual proper standards for judical or appellate procedure.

CONCLUSION

The writ should be denied since the Court of Appeals for the Ninth Circuit is not in conflict with other circuits; is following the instructions of this court; has not departed from the usual course of either appellate review or judicial proceedings; nor has sanctioned such departure.

Respectfully submitted,

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